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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/823,841	03/30/2001	Douglas W. Pocius	M-9728 US	6104

7590 06/26/2002

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EXAMINER

AMARI, ALESSANDRO V

ART UNIT

PAPER NUMBER

2872

DATE MAILED: 06/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Offic Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/823,841	POCIUS ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Alessandro V. Amari	2872

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 1-49 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

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## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 6, 7, 14-22, 25-26, 35-40, 48, 49 drawn to an apparatus/method of forming a light emitting device, classified in class 438, subclass 29+.
  - II. Claims 3, 4, 5, 8, 27-33, 45, 46, 47 drawn to a specific method of stamping an optical element, classified in class 359, subclass 15.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as process of making and an apparatus/method.

The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the product can be made by another process such as molding.

Because these inventions are distinct for the reasons given above and the search required for Group II is not required for Group I, restriction for examination purposes as indicated is proper.

2. Claims 1, 2, 9, 10, 11, 12, 13, 23, 24, 34, 41, 42, 43 and 44 link(s) inventions I and II. The restriction requirement between the linked inventions is subject to the nonallowance of the linking claim(s), claims 1, 2, 9, 10, 11, 12, 13, 23, 24, 34, 41, 42, 43 and 44. Upon the allowance of the linking claim(s), the restriction requirement as to the

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linked inventions shall be withdrawn and any claim(s) depending from or otherwise including all the limitations of the allowable linking claim(s) will be entitled to examination in the instant application. Applicant(s) are advised that if any such claim(s) depending from or including all the limitations of the allowable linking claim(s) is/are presented in a continuation or divisional application, the claims of the continuation or divisional application may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. *In re Ziegler*, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

3. If the applicant elects I, then a species as identified below must be elected also. This application contains claims directed to the following patentably distinct species of the claimed invention:

Species 1 – emission of photons toward preselected area – claims 14, 35

Species 2 – light emitting device surface is beveled – claims 6, 15

Species 3 – light emitting device has confined emission – claims 7, 16

Species 4 - semiconductor light emitter and first optical element comprise

$(Al_xGa_{1-x})_yIn_{1-y}P$  where  $0 \leq x \leq 1$  and  $0 \leq y \leq 1$  - claims 17, 36

Species 5 – light emitter comprises a III-nitride semiconductor alloy and first optical element comprises one of silicon carbide, zinc sulfide, zirconium oxide, a material containing lead oxide and sapphire – claims 18, 37

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Species 6 - light emitter comprises a III-nitride semiconductor alloy and first optical element comprises one of silicon carbide, zinc sulfide, zirconium oxide, a material containing lead oxide and sapphire with flip chip configuration – claims 48, 49

Species 7 – semiconductor light emitter and first optical element comprise aluminum gallium arsenide semiconductor alloy – claims 19, 38

Species 8 – light emitter has flip chip configuration – claims 20, 39

Species 9 – light emitter layer perpendicular to Fresnel lens – claims 21, 40

Species 10 – radiation pattern controlled by ratio of focal length to distance between first optical element and light emitting layer – claims 22

Species 11 – 2<sup>nd</sup> optical element on surface of light emitter – claims 25, 26

4. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 2, 9-13, 23, 24, 34, 41-44 are generic.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

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Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alessandro V. Amari whose telephone number is (703) 306-0533. The examiner can normally be reached on Monday-Friday 8:00 AM to 5:30 PM.

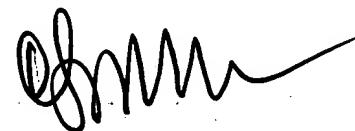
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cassandra Spyrou can be reached on (703) 308-1687. The fax phone

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numbers for the organization where this application or proceeding is assigned are (703) 872-9318 for regular communications and (703) 872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

ava *AV*  
June 20, 2002



Cassandra Spyrou  
Supervisory Patent Examiner  
Center 2800